

CONCEPT PAPER ON DIRECTION FOR FUTURE USAID SUPPORT TO JUSTICE SECTOR REFORM THROUGH THE USAID/JORDAN RULE OF LAW PROGRAM APRIL 2011

PURPOSE

The purpose of this Concept Paper is to help the judiciary and the Ministry of Justice (MOJ) to improve the delivery of justice in Jordan and moreover, to offer guidance to USAID in defining future support to the justice sector. In support of these efforts, USAID commissioned a general assessment of the justice sector in Jordan to identify legal framework, operational, and other areas requiring new or continued justice sector development. The resulting report described the general status of the justice sector, areas in need of reform, and opportunities to further USAID programming assistance. Subsequently, USAID requested that Tetra Tech DPK, the implementer of the USAID funded Rule of Law Program (ROLP), prepare a ‘concept paper’ of new activities within the existing task order components for option years four (2012) and five (2013) based on the findings in the Justice Sector Assessment Report.

STATUS OF THE JUSTICE SECTOR IN JORDAN

The following is a summary of the current status of the Jordanian justice sector with a particular focus on the Jordanian judiciary and related institutions including areas where further improvement is needed.

- **Legitimacy and effectiveness of the justice sector** is undermined by the use of outdated and questionable techniques such as executive branch-issued temporary laws and use of special courts versus normal justice sector processes as well as continued inefficiencies in procedures within the justice sector institutions.
- **Fairness of the justice sector** suffers from the lack of access to justice for women, undue and inappropriate influence on judicial decision-making by executive and legislative bodies and officials, undue influence exerted by higher level judges on lower court judges, the absence of sufficient legal aid and public defense for indigents, and court staff not fully qualified or trained to appropriately deal with court clients.
- **There is lack of utilization of constitutionally enabled checks and balances** that define appropriate separation between the judiciary and the legislative and executive branches of government. The judiciary does not exercise administrative and financial independence. The MOJ controls some key functions that under separation of powers principles may be better placed under the judicial branch such as judicial inspections.
- **Philosophical consensus is lacking on what judicial independence means.** Within the judiciary there is a lack of a clearly and publicly articulated definition/scope of “independent judiciary,” empowered and encumbered by checks and balances with executive and legislative branches, and driven by a strategic plan and timetable to achieve the key elements that will achieve the goal of the judiciary independently setting and controlling policies and administrative and human resource processes for the judicial branch.
- **The judiciary needs to strengthen its institutional capacity.** There is a lack of institutional strength in the judiciary to function as a truly independent branch of government. (e.g., weak institutional and administrative capacity, no strong systems of accountability, lack of management culture, lack of merit-based personnel systems and professionalism, frequent

CONCEPT PAPER ON DIRECTION FOR FUTURE USAID SUPPORT TO JUSTICE SECTOR REFORM THROUGH THE USAID/JORDAN RULE OF LAW PROGRAM

- changes in leadership, and a lack of change agents). The Judicial Council has recently commenced the development of new management and administrative units which have the potential to substantially improve the Council's institutional capacity and will need significant technical assistance and training to take on its new roles and functions.
- **Application of the law is inconsistent.** There are problems with effective and consistent application of laws, especially in the criminal area, due to underperformance by prosecutors who are often inexperienced and insufficiently trained. There is a lack of respect for the orders of the judiciary due to ineffective execution of judgments, excessive delay, and perceptions that judicial rulings can be overturned or influenced by higher ranking authorities. These perceptions and realities undermine confidence in and respect for the justice system.
- **Judicial decision making lacks uniformity.** Jordan does not have a Constitutional Court or similar appellate body that can unify interpretation of the law by the courts, resulting in inconsistent decisions in cases involving the same factual circumstances.
- **Further professionalism in the justice sector is needed.** The capabilities of justice sector personnel – judges, non-judicial court and administrative (MOJ and Judiciary) personnel, and attorneys – have improved yet require further enhancement in knowledge, experience, skills, and motivation.
- **Productivity gains need to be consolidated and expanded upon.** Modernization of courts and judicial departments has occurred yet additional technical assistance to improve use of modern productivity tools and techniques, training, and procedural reform is required to increase productivity, expediency, efficiency, and predictability.
- **Greater integration and communication between the institutions within the justice system is required.** Greater links and communication/cooperation are also needed between formal and informal dispute resolution systems, e.g., ADR, *Sharia*, and tribal.
- **Alternative dispute resolution (ADR) services are effective yet underutilized.** Mediation services have been introduced and achieve strong results yet disputants take advantage of the option in less than 1 percent of cases.
- **Key justice related institutions such as bar associations, law schools, and civil society require strengthening** to promote long-term justice sector reform and promotion of a rule of law culture.

CHALLENGES TO JUSTICE SECTOR REFORM

Challenges to address the foregoing issues and strengthen the justice sector are:

- **Political will from the Royal Court and Executive Branch for a strong, co-equal, and fully independent judiciary is uneven** and at times resistant to changes, even though public demand is strong.
- **Frequent changes in justice sector leadership have disrupted reform continuity** and undermine the establishment of a strategically-planned change process with short, medium, and long term goals. This is particularly true in the MOJ and other key governmental positions.
- **Lack of assertive leadership in the judiciary** in defining a way forward has resulted in low morale and confidence among judges. There is also a lack of leadership over and judicial behavioral changes necessary to implement fundamental reforms to achieve judicial independence.
- **The legal framework controlling the organization and operation of the justice sector at times impedes the efficient delivery of justice sector services.** Despite key legal and regulatory reforms supported by ROLP, there remain deficiencies in the organization and roles and

CONCEPT PAPER ON DIRECTION FOR FUTURE USAID SUPPORT TO JUSTICE SECTOR REFORM THROUGH THE USAID/JORDAN RULE OF LAW PROGRAM

responsibilities of justice sector institutions, judicial power, and roles and responsibilities of the legal community. There are also overly complex and inefficient procedures in different case types (e.g., criminal, civil, family). Present deficiencies in these areas undermine the efficiency of the justice system and the protection of basic human rights.

- **Jordanian culture generally remains pessimistic about the chance for real change**, with general disrespect for legal institutions and wide cultural acceptance of the way it has always been done.
- **Lack of enforcement of rules** is a general Jordanian cultural problem and has specific application in the courts with judges unwilling to enforce procedural rules with attorneys and in general with enforcement of judgments.
- **Judges and prosecutors tend to not recognize the benefit of a greater role for support staff** and the importance of customer service to the public's perceptions of the justice sector.
- **There is limited media engagement and lack of civil society organizations** focused on the rule of law and the justice sector to encourage external demand for judicial reform and improved services.

USAID ACHIEVEMENTS IN THE RULE OF LAW

There has been significant success in modernizing numerous court procedures; developing more efficient management structures; improving transparency and generating access to court processes through automated case management systems; as well as increased professionalism of judicial and non-judicial staff through training and the development of procedural guidelines. The skills of many new judges have been enhanced because of improvements to the Judicial Institute of Jordan (JIJ) Judicial Diploma Program and Continuing Legal Education Program and also through the Future Judges Fund which has helped introduce merit-based policies for selection of future judges and has greatly increased the participation of women in judicial careers.

Additional progress is needed in other areas, mainly in enhancing the administrative capacity, independence, integrity and transparency of the judiciary, promoting policy dialogue on justice reform, supporting legal framework reforms, and increasing justice sector and civil society stakeholder participation and cooperation in justice sector reform.

RECOMMENDED ADJUSTMENTS TO USAID STRATEGIC OBJECTIVES

Tetra Tech DPK recommends four strategic objectives for ROLP option years. These objectives address USAID Jordan's operational plan objectives and program elements including:

Operational Plan Objective: Governing Justly & Democratically

Program Area: Promote an Independent and Empowered Judiciary While Increasing Its Transparency and Accountability

Program Element: Judicial Independence

Sub-Elements:

- Independence and Accountability
- Justice Reform Actors

Program Element: Enhance Judicial Performance to Reduce Delays and Increase Public Confidence

Sub-Element: Justice System

- Justice System Actors

CONCEPT PAPER ON DIRECTION FOR FUTURE USAID SUPPORT TO JUSTICE SECTOR REFORM THROUGH THE USAID/JORDAN RULE OF LAW PROGRAM

- Operations of Institutions and Actors

Program Element: Expand Access to Justice, Rule of Law and Public Awareness of the Rule of Law

Sub-Elements:

- Access to Justice
- Fairness and Equity

OPPORTUNITIES TO FURTHER USAID PROGRAMMING ASSISTANCE

To achieve the foregoing strategic objectives, the assessment team recommended an integrated set of programming activities that encompass a broad range of reforms and will require a long-term, continued effort to fully achieve. Tetra Tech DPK recommends the initiation of some of these activities in the current third year of the ROL program and continuation into the option years. Other objectives and associated activities will require USAID or other donor support beyond ROLP for full realization. The following summarizes our recommendations for the focus of ROLP's efforts going forward.

Component 1: Enhance Judicial Performance to Reduce Delays and Increase Public Confidence

Reform Procedural Codes.. Support organizational, procedural and legal framework reforms to strengthen legitimacy of the law, judicial independence, and increase justice sector access, performance, and efficiency.

Activities:

- Support strengthening the Opinion and Legislative Bureau.
- Assemble working groups of legal professionals to draft laws and procedures.
- Provide comparative models and best practices on targeted laws and procedures.
- Organize knowledgeable consultants to advise Jordanian counterparts on the development of revised laws and procedures.
- Support provision of training in legal drafting & policy development to justice sector institutions and legal professionals.
- Engage local organizations in developing or advocating for new laws and procedures.
- Help develop a program to help reduce excessive pre-trial detention as means of reducing violations of basic human rights and the delay in criminal case processing e.g., develop tickler systems in the courts to alert judges of excessive detention situations.
- Support implementation of human rights reforms in the area of juvenile justice, e.g., improve sentencing policies and expand rehabilitation service options through grants, technical assistance, and training of NGOs.
- Support the launch initiatives to build consensus and implement criminal and civil judgment execution legal framework reforms.

Improve Efficiency and Effectiveness of Justice Sector Institutions. Activities include:

- Help strengthen the work of the Prosecutor and Attorney General's office through training, automation, and technical assistance.
- Work to improve customer service and access to services.

CONCEPT PAPER ON DIRECTION FOR FUTURE USAID SUPPORT TO JUSTICE SECTOR REFORM THROUGH THE USAID/JORDAN RULE OF LAW PROGRAM

- Help improve access to justice for historically disadvantaged groups including women, displaced persons, disabled persons, and the impoverished.
- Support provision of counsel for indigent defendants by supporting public defender and legal aid programs.
- Promote judge referral and litigant use of mediation.
- Work to reduce judges' involvement in administrative tasks during the litigation and execution phases.
- Continue support to the Judicial Institute for training programs for judicial and non-judicial staff.

Component 2. Promote an Independent and Empowered Judiciary While Increasing its Transparency and Accountability.

Enhance the Capacity and Transparency of the Judicial Council. Assist the Judicial Council to develop administrative capacity to better manage the judiciary. Develop programs that give immediate purpose to each administrative unit and deliver tangible value to the Judicial Council within each administrative unit. Furthermore, enhance the Technical Office capacity of the Cassation Court to conduct legal research and support the Cassation court judicial processes to expedite and improve the quality of judgments.

Activities:

- Help develop four Judicial Council administrative units
 - Programs may include strengthened management of judicial affairs, transparent performance based promotions, judicial inspections, professional development, training programs related to specialized case types, improved communications and public relations capacity of the judiciary, develop, monitor, and report judicial performance, support of legal and legislative related research and drafting, and support meeting logistics of the Judicial Council, subcommittees, and the office of the Chief Justice.
- Support the development of specialized training programs for judges and prosecutors.
- Help strengthen the administrative and legal research capacity of the Cassation Court Technical Office.
- Help develop judicial performance indicators and promote the use of data driven management practices throughout justice sector institutions.
- Help develop and conduct training of key justice sector personnel on leadership, shifting management, and institutional performance and integrity, to create change agents and establish pre-conditions for successful reforms.
- Support reduce conflicts of interest, unethical influence on judges, and lack of transparency by improving the use of the codes of ethics, clarifying conflict laws, improving judicial inspections systems, engaging civil society in judicial watchdog activities, and increasing engagement with the media.

Promote Policy Dialogue and Increase Stakeholder Cooperation on Justice Reform. Initiate stakeholder policy dialogues on the role of justice sector reform in Jordan and improve cooperation among the key justice sector stakeholder groups. Engage civil society organizations to facilitate dialogue.

CONCEPT PAPER ON DIRECTION FOR FUTURE USAID SUPPORT TO JUSTICE SECTOR REFORM THROUGH THE USAID/JORDAN RULE OF LAW PROGRAM

Activities:

- Support initiation of stakeholder policy dialogues on the role of justice sector reform including justice personnel, members of legislative and Parliamentary committees, lawyers, CSOs, business and professional associations, and key members of the Jordanian reform movement.
- Through public dialogues and the establishment of committees or institutional liaisons to help strengthen communications and cooperation of justice sector counterparts (e.g. law enforcement, prosecution, courts, corrections, and other government ministries or entities with interfaces with court cases).
- Work to build consensus for and assist in the creation of a Constitutional Court.
- Facilitate joint initiatives of bench-bar committees on concrete issues like procedural code reform to increase cooperation among courts and attorneys to improve and reduce delay tactics and the use of unethical influence on judicial decision making.
- Help to develop judge and court manager organizations to improve professionalism, establish continuing education standards, advocate for appropriate salaries and benefits as well as to enhance the status of judges and court personnel in Jordan.
- Support reducing corruption's negative impact on justice sector functioning by engaging with the Anti-Corruption Commission to explore opportunities for strengthening its capacity and effectiveness.
- Support the development of broad based NGO coalitions to advocate for the Rule of Law and justice sector reforms
- Help strengthen NGO justice sector monitoring of activities to reinforce reform objectives e.g., give focus on progress towards judicial independence, pre-trial detention, judicial ethics, access to information, and merit-based promotion systems

NEXT STEPS

Tetra Tech DPK is ready to prepare, at USAID request and with input from USAID on the above proposed objectives and activities, detailed technical and budget proposals and a staffing plan for the option years.